

REMARKS

The Examiner has objected to the specification. Such objections are deemed to be avoided by virtue of the clarifications made hereinabove to the specification.

The Examiner has further objected to the drawings. Such objections are deemed to be avoided by virtue of the clarifications made hereinabove to the drawings.

With respect to the substantive claim rejections, applicant contends that the claims considered by the Examiner incorrectly included the claims from a co-pending application filed 04/18/01 under application serial number 09/836,238.

When this error was discovered in the Examiner's office action, applicant conducted an interview with the Examiner to address this problem. During such interview, the Examiner asserted that Claims 1-25 from application serial number 09/836,238 were entered into the present application via a preliminary amendment filed 09/07/01. In reviewing the file, however, applicant notes that the preliminary amendment filed 09/07/01 merely consisted of amendments to the specification.

Moreover, the Examiner, in support of his assertion, provided applicant with a copy of Claims 1-25 from application serial number 09/836,238, that were purportedly presented in the preliminary amendment filed 09/07/01. See Appendix A. First, such Claims 1-25 are not present in applicant's copy of the instant application, let alone in the preliminary amendment filed 09/07/01. Moreover, as evidenced by Appendix A, the pages and claims are numbered exactly as filed in application serial number 09/836,238. Further, Appendix A reflects the attorney docket number associated with application serial number 09/836,238.

To this end, applicant can not explain how the Examiner obtained the copy of Claims 1-25 from application serial number 09/836,238, in the present

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application. What is clear, however, is that it was neither the intention nor fault of applicant.

In the latest Office Action mailed 03/31/05, it appears that the Examiner is attempting to avoid dealing with the foregoing error by arguing that applicant has "constructively elected [the claims addressed in the Office Action mailed 10/24/04] by original presentation for prosecution on the merits."

In response, applicant contends that, contrary to the Examiner's assertion, applicant has not presented for prosecution the claims addressed in the Office Action mailed 10/24/04. The only evidence that the Examiner has presented to support such assertion is the list of claims in Appendix A, which were never filed by applicant in the present application.

Thus, if the Examiner continues to refuse to examine original Claims 1-39 above, applicant hereby requests a copy of the nonexistent preliminary amendment allegedly filed 09/07/01 which instructed the United States Patent Office to replace original Claims 1-39 above with those set forth in Appendix A.

Appendix A is not a preliminary amendment to the claims (note the lack of instructions, the incorrect numbering, etc.); but rather, obviously, a copy of the claims, as filed, in application serial number 09/836,238 (which, due to an error in the United States Patent Office, was placed in the instant application file).

By virtue of the remarks made hereinabove, applicant contends that the rejections under 35 USC 112, 35 USC 103, 35 USC 101, and double patenting, have been addressed as being moot in view of the error made by the United States Patent Office.

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In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. If any fees are due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. NA11P089/00.175.01).

Respectfully submitted,


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